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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120731291-2522-02]

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Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing 2013-2015 specifications and management measures for Atlantic mackerel, and 2013 specifications for butterfish. Specifications for longfin squid and Illex squid were set for 3 years in 2012 (2012-2014) and therefore are not included in this year's specification rulemaking. These final specifications also implement regulatory changes to the longfin squid fishery, the butterfish mortality cap to avoid 1-2 week closures at the end of a Trimester, and the pre-trip observer notification for longfin squid trips landing over 2,500 lb (1.3 mt) from 72 to 48 hr. Compared to 2012, the butterfish domestic annual harvest implemented in this action (2,570 mt) represents an increase of 1,698 mt over the 2012 domestic annual harvest (872 mt). The butterfish mortality cap implemented in this action (4,464 mt) represents an increase of 1,299-mt over the current 2012 cap level (3,165 mt). Due to the increase in the proposed butterfish quota, this action also implements a variety of management measures for

controlling effort in the directed butterfish fishery, including changes to trip limits, the closure threshold for the directed fishery, and post-closure trip limits. Finally, this rule implements minor corrections to existing regulatory text, to clarify the intent of the regulations. These specifications and management measures promote the utilization and conservation of the Atlantic mackerel, squid, and butterfish resource.

DATES: Effective [insert date of publication in the FEDERAL REGISTER], except for the amendments to § 648.27, which will be effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the 2013 specifications document, including the Environmental Assessment (EA), is available from John K. Bullard, Northeast Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from: John K. Bullard, Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930-2276, or via the internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978-675-2179, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

Specifications, as referred to in this rule, are the combined suite of commercial and recreational catch levels established for 1 or more fishing years. The specification process also

allows for the modification of a select number of management measures, such as closure thresholds, gear restrictions, and possession limits. The Mid-Atlantic Fishery Management Council's (Council) process for establishing specifications relies on provisions within the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) and its implementing regulations, as well as requirements established by the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Specifically, section 302(g)(1)(B) of the Magnuson-Stevens Act states that the Scientific and Statistical Committee (SSC) for each Regional Fishery Management Council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing level (OFL).

The Council's SSC met on May 23 and 24, 2012, confirming 2013 specifications for Illex and longfin squid and recommending ABCs for the 2013-2015 Atlantic mackerel (mackerel) and 2013 butterfish specifications. A proposed rule for 2013 MSB specifications and management measures was published on November 19, 2012 (77 FR 69426), and the public comment period for the proposed rule ended on December 10, 2012.

The MSB regulations require the specification of annual catch limits (ACL) and accountability measures (AM) for mackerel and butterfish (both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than 1 year). In addition, the regulations require the specification of domestic annual harvest (DAH), domestic annual processing (DAP), and total allowable level of foreign fishing (TALFF), along with joint venture

processing for (JVP) commercial and recreational annual catch totals (ACT) for mackerel, the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Research Set-Aside

The Mid-Atlantic Research Set-Aside (RSA) Program funds research projects through the sale of fish that has been set aside from the total annual quota. The RSA may vary between 0 and 3 percent of the overall quota for each species. NMFS solicited research proposals under the 2013 Mid-Atlantic RSA Program through a Federal Funding Opportunity announcement that published on February 17, 2012 (Funding Opportunity Number NOAA-NMFS-NEFSC-2013-2003258 on grants.gov). Two projects were preliminarily selected by NMFS, although final grant approval by NOAA Grants is pending. Federally permitted vessels harvesting RSA quota are issued Exempted Fishing Permits in support of approved research projects, which would authorize them to exceed Federal possession limits and to fish during Federal quota closures. If approved, the projects would be awarded 589,800 lb (267,529 kg) of summer flounder, 958,950 lb (434,972 kg) of scup, 111,900 lb (50,757 kg) of black sea bass, 874,000 lb (396,440 kg) of longfin squid, 79,455 lb (36,040 kg) of butterfish for discards on longfin squid research trips, and 715,830 lb (324,695 kg) of bluefish. The research projects preliminary selected include the following:

- A near-shore trawl survey between Martha's Vineyard, MA, and Cape Hatteras, NC, in shallow waters unsampled by current Federal finfish bottom trawl surveys to provide stock assessment data for Mid-Atlantic RSA species, including summer flounder, scup,

black sea bass, longfin squid, butterfish, and Atlantic bluefish, and assessment-quality data for weakfish, Atlantic croaker, spot, several skate and ray species, smooth dogfish, horseshoe crab, and several unmanaged but important forage species; and

- A fishery-independent black sea bass survey of four separate hard-bottom sites unsampled by current state and Federal finfish bottom trawl surveys in southern New

England and Mid-Atlantic waters using unvented black sea bass pots.

The Council recommended that up to 3 percent of the total ACL for mackerel, up to 3 percent of the IOY for Illex and longfin squid, and up to 2 percent of the butterfish ACT could be set aside to fund projects selected under the 2013 Mid-Atlantic RSA Program, where 59 mt could be set aside for butterfish discard on longfin squid research trips, and 151 mt could be set aside for directed butterfish landings. The final RSA awards are subtracted from the IOY for longfin squid, and the butterfish mortality cap in Table 1 below.

Table 1. Final Specifications, in Metric Tons (mt), for Mackerel for 2013-2015, Butterfish for 2013, and Longfin and Illex Squid for the 2013-2014 Fishing Year

Specifications	Mackerel	Butterfish	<u>Illex</u>	Longfin
OFL	Unknown	Unknown	Unknown	Unknown
ABC	43,781	8,400	24,000	23,400
ACL	43,781	7,560	N/A	N/A

Commercial ACT	34,907	7,560	N/A	N/A
Recreational ACT/RHL	2,443	N/A	N/A	N/A
IOY	N/A	N/A	22,915	22,049
DAH/DAP	33,821	2,570	22,915	22,049
JVP	0	N/A	N/A	N/A
TALFF	0	0	N/A	N/A
RSA	N/A	36	N/A	396
Butterfish Mortality Cap		4,464		

Final 2013-2015 Specifications and Management Measures for Mackerel

This action specifies the mackerel U.S. ABC at 43,781 mt. The status of the mackerel stock was assessed by the Transboundary Resources Assessment Committee (TRAC) in March 2010. The 2010 TRAC Status Report indicated reduced productivity in the stock and a lack of older fish in both the survey and catch data, and determined that the status of the mackerel stock is unknown because biomass reference points could not be determined. Due to uncertainty in the assessment, the TRAC recommended that total annual catches not exceed 80,000 mt (average total U.S. and Canadian landings from 2006-2008) until new information is available. The mackerel stock-wide ABC was set at 80,000 mt for 2012, consistent with the TRAC recommendation. Since a new mackerel assessment is not expected for several years, the SSC recommended maintaining the 2012 mackerel specification and specifying the stock-wide ABC for 3 years (2013-2015) at 80,000 mt. The Council recommended a U.S. ABC of 43,781 mt (80,000 mt – 36,219 mt (2010 actual Canadian catch)). Due to the variability in recent Canadian

catch, and the inability to predict Canadian catch for 2013, the SSC recommended the use of Canadian catch from 2010 (the same amount used for setting 2012 specifications).

Consistent with MSB Amendment 11, the Council recommended a recreational allocation of 2,714 mt (6.2 percent of the U.S. ABC). The proposed Recreational ACT of 2,443 mt (90 percent of the U.S. ABC of 2,714 mt) was reduced to account for low precision and time lag of recreational catch estimates, as well as lack of recreational discard estimates. The Recreational ACT is equal to the Recreational Harvest Limit (RHL), which would be the effective cap on recreational catch.

For the commercial mackerel fishery, the Council recommended a commercial fishery allocation of 41,067 mt (93.8 percent of the U.S. ABC, the portion of the ACL that was not allocated to the recreational fishery). The recommended Commercial ACT of 34,907 mt (85 percent of 41,067) was reduced to address uncertainty in estimated 2013 Canadian landings, uncertainty in discard estimates, and possible misreporting. The Commercial ACT was further reduced by a discard rate of 3.11 percent (mean plus one standard deviation of discards from 1999-2008), to arrive at the proposed DAH of 33,821 mt. The DAH was proposed as the effective cap on commercial catch, as it has been in past specifications.

Consistent with the Council's recommendation, this action sets the 2013-2015 mackerel specifications so that the U.S. ABC/ACL is 43,781 mt; the Commercial ACT is 34,907 mt; the DAH and DAP are 33,821 mt; and the Recreational ACT is 2,443 mt. Additionally, as recommended by the Council, JVP is maintained as zero. There was no mackerel awarded for the RSA program for the 2013 fishing year.

The Magnuson-Stevens Act provides that the specification of TALFF, if any, shall be the

portion of the optimum yield (OY) of a fishery that will not be harvested by U.S. vessels.

TALFF would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with U.S. industry efforts to expand exports. While a surplus existed between ABC and the mackerel fleet's harvesting capacity for many years, that surplus has disappeared due to decreases in the specifications in recent years. Based on analysis and a review of the state of the world mackerel market and possible increases in U.S. production levels, the Council concluded that specifying a DAH/DAP resulting in zero TALFF will yield positive social and economic benefits to both U.S. harvesters and processors, and to the Nation. For these reasons, consistent with the Council's recommendation, NMFS is specifying the DAH at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to support the U.S. mackerel industry. NMFS concurs that it is reasonable to assume that in 2013 the commercial mackerel fishery has the ability to harvest 33,821 mt of mackerel.

Final 2013 Specifications and Management Measures for Butterfish

This action specifies the butterfish ABC at 8,400 mt. The current status of the butterfish stock is unknown because biomass reference points could not be determined in the SAW 49 assessment (February 2010); however, survey trends since the most recent assessment suggest an increase in butterfish abundance. In recommending 2013 specifications, the SSC considered multiple sources of information, including a recent analysis of the butterfish stock by Dr. Paul Rago and Dr. Tim Miller from NOAA's Northeast Fisheries Science Center (NEFSC). Because of the uncertainty in the most recent butterfish stock assessment, on April 6, 2012, the Council requested that NEFSC offer additional analysis of the butterfish stock to aid the SSC in the ABC

setting process for the 2013 fishing year. The NEFSC analysis (May 2, 2012) applied ranges of a number of different factors (such as natural mortality and survey catchability) to develop a range of likely stock biomasses that would be consistent with recent survey results and observed butterfish catch. The NEFSC also examined a range of fishing mortalities that would result from these biomass estimates. The SSC used the NEFSC analysis, along with guidance (Patterson, 1992) that suggests maintaining a natural mortality/fishing mortality ratio of 67 percent for small pelagic species, to develop a proxy OFL for butterfish. Consistent with the 2010 butterfish assessment, the SSC assumed a high level of natural mortality ($M = 0.8$) and applied the 67-percent ratio to result in a fishing mortality rate of $F = 0.536$, which the SSC used as a proxy maximum F threshold for butterfish. In the NEFSC analysis, a catch of 16,800 mt would only lead to fishing mortality rates higher than $F = 0.536$ (i.e., rates consistent with overfishing based on the maximum fishing mortality rate threshold proxy) under very extreme assumptions. The SSC therefore adopted 16,800 mt as a proxy OFL. The SSC buffered the proxy OFL by 50 percent to reach the butterfish ABC of 8,400 mt. The SSC's justification for this buffer noted that the short life history of butterfish gives limited time for management to respond to adverse patterns, that recruitment of butterfish is highly variable and uncertain, that the stock status of butterfish is unknown, and that butterfish are susceptible to environmental and ecosystem variability, in particular inter-annual variability in natural mortality. A detailed summary of the SSC's rationale for its 2013 butterfish ABC recommendation is available in its May 2012 Report (available, along with other materials from the SSC discussion, at:

http://www.mafmc.org/meeting_materials/SSC/2012-05/SSC_2012_05.htm).

The Council recommended setting the butterfish ACL equal to the ABC, and establishing

a 10-percent buffer between ACL and ACT for management uncertainty, which would result in an ACT of 7,560 mt. Since discards have been roughly 2/3 of catch (1999-2008 average), the Council recommended setting the DAH and DAP at 2,570 mt (7,560 mt – 4,990 mt discards). Since up to 3 percent of the ACL for butterfish may be set aside for scientific research, the Council recommended setting aside 2 percent of the butterfish ACT for research, where 59 mt would be set aside for butterfish discard on longfin squid research trips, and 151 mt would be set aside for directed butterfish landings. RSA projects were not awarded any directed butterfish, but were awarded 36 mt of butterfish to account for discards on longfin squid research trips. After accounting for 36 mt of RSA, the butterfish mortality cap on the longfin squid fishery was revised from 4,500 mt to 4,464 mt (59.05 percent of the ACT of 7,560 mt).

NMFS is implementing butterfish specifications for the 2013 fishing year, consistent with the Council's recommendations, that would set the butterfish ABC/ACL at 8,400 mt, the ACT at 7,560 mt, the DAH and DAP at 2,570 mt, TALFF at zero, and the butterfish mortality cap on the longfin squid fishery at 4,464 mt. Additionally, this action allocates the 2013 butterfish mortality cap by Trimester as follows:

Table 2. Trimester Allocation of Butterfish Mortality Cap on the Longfin Squid Fishery for 2013

Trimester		Percent	Metric Tons
I	(Jan-Apr)	65	2902
II	(May-Aug)	3.3	147
III	(Sep-Dec)	31.7	1415
Total		100	4,464

Due to the increase in the recommended butterfish DAH and butterfish mortality cap, a variety of management measures were recommended by the Council to control fishing effort

while allowing the expansion of a profitable directed butterfish fishery. The Council recommended, and this action implements, a three-phase management system for the directed butterfish fishery (Table 3) to allow for maximum utilization of the butterfish resource without exceeding the stock-wide ACL.

In phase 1, there is no trip limit for vessels issued longfin squid/butterfish moratorium permits using mesh greater than or equal to 3 inches (7.62 cm), a 2,500-lb (1.13-mt) trip limit for longfin squid/butterfish moratorium permits using mesh less than 3 inches (7.62 cm), and a trip limit of 600 lb (0.27 mt) for vessels issued squid/butterfish incidental catch permits. Once butterfish harvest reaches the trip hold reduction threshold to move from phase 1 to phase 2, the trip limit for longfin squid/butterfish moratorium permit holders will be reduced while in phase 2 to 5,000 lb (2.27 mt) for vessels using greater than or equal to 3-inch (7.62-cm) mesh and 2,500 lb (1.13 mt) for vessels using under 3-inch (7.62-cm) mesh. When butterfish harvest is projected to reach the trip hold reduction thresholds to move from phase 2 to phase 3, the trip limit for all longfin squid/butterfish moratorium permit holders will be reduced while in phase 3 to 500 lb (0.23 mt) to avoid quota overages. For phases 2 and 3, the quota thresholds to reduce the trip limits will vary bimonthly throughout the year, as shown in Tables 4 and 5.

Table 3. Three-Phase Butterfish Management System

Phase	Longfin squid/butterfish moratorium permit Trip Limit		Squid/butterfish incidental catch permit Trip Limit
	≥ 3 inch (7.62 cm) mesh	<3 inch (7.62 cm) mesh	
1	Unlimited	2,500 lb (1.13 mt)	600 lb (0.27 mt)
2	5,000 lb (2.27 mt)	2,500 lb (1.13 mt)	600 lb (0.27 mt)
3	500 lb (0.23 mt)	500 lb (0.23 mt)	600 lb (0.27 mt)

Table 4. 2013 Butterfish Thresholds for Reducing Trip Limits from Phase 1 to Phase 2

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	40	1,028
Mar-Apr	47	1,208
May-Jun	55	1,414
Jul-Aug	63	1,619
Sept-Oct	71	1,825
Nov-Dec	78	2,005

Table 5. 2013 Butterfish Thresholds for Reducing Trip Limits from Phase 2 to Phase 3

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	58	1,491
Mar-Apr	64	1,645
May-Jun	71	1,825
Jul-Aug	78	2,005
Sept-Oct	85	2,185
Nov-Dec	91	2,339

Finally, during phase 3, the NMFS Regional Administrator has the authority to adjust the phase 3 trip limit for limited access vessels within the range from 250 (0.11 mt) to 750 lb (0.34 mt) so that butterfish harvest does not exceed the annual DAH.

Final Management Measures for Longfin Squid

The Council also recommended regulatory changes for the longfin squid fishery. Currently, vessels that intend to land greater than 2,500 lb (1.13 mt) of longfin squid are required to notify the Northeast Fisheries Observer Program (NEFOP) at least 72 hr in advance of the start of a trip. Longfin squid vessel owners have reported that the 72-hr call in notification is burdensome, as trips are often planned based on weather, sea conditions, and longfin squid movement patterns, which can be highly variable. Therefore, the Council recommended, and

NMFS is changing the longfin pre-trip observer notification requirement from 72 to 48 hr. In addition, to avoid closing the directed longfin fishery close to the end of a trimester, the closure threshold for the directed longfin squid fishery will change on April 15 (2 weeks prior to the end of Trimester 1) and August 15 (2 weeks prior to the end of Trimester 2) of each year from 90 to 95 percent.

Final Management Measures for the Butterfish Mortality Cap in the Longfin Squid Fishery

To avoid closing the directed longfin squid fishery due to the butterfish mortality cap in the last 2 weeks of Trimester 1, NMFS is changing the closure threshold on April 15 of each year from 80 to 90 percent. In addition, NMFS will close the directed longfin squid fishery in Trimester 2 if 75 percent of the annual mortality cap is projected to be reached. As there is currently no closure mechanism for the butterfish mortality cap in Trimester 2, the entire annual butterfish mortality cap could potentially be harvested in Trimester 2, which would not leave any butterfish mortality cap quota for the Trimester 3 longfin squid fishery. This change is being implemented to avoid the entire allocation of the butterfish mortality cap being harvested prior to the start of Trimester 3 on September 1 of each fishing year.

This final rule also contains minor corrections to existing regulations. The corrections do not change the intent of any regulations; they only clarify the existing regulations by correcting minor errors. The current accountability measure regulations at § 648.24 state that NMFS will implement any changes to the ACL due to overages from the previous year through notification in the Federal Register, by March 31 of the fishing year in which the deductions will be made. However, due to delayed reporting and analysis time to estimate discards in the MSB fisheries, finalized data are not available until April 15 of each year. Therefore, NMFS will publish a

notification in the Federal Register announcing any overage deductions by May 15 of the fishing year in which the deductions will be made.

This rule also corrects § 648.22(b)(2) regarding the mackerel ABC. This rule clarifies that the MAFMC's SSC recommends a stock-wide ABC, and that the Domestic ABC or ACL is calculated by deducting Canadian catch from the stock-wide ABC. This rule also corrects § 648.27(c) to clarify that the pre-trip notification requirement for vessels issued longfin squid/butterfish moratorium permits is for trips with landings greater than 2,500 lb (1.13 mt). While vessels previously issued longfin squid/butterfish moratorium permits intending to land greater than or equal to 2,500 lb (1.13 mt) were required to call into the pre-trip notification system, this action clarifies that only such vessels intending to land greater than 2,500 lb (1.13 mt) (ex. 2,501 mt) are required to call into the pre-trip notification system. Only those trips with longfin squid landings of 2,501 lb (1.13 mt) and greater will be used to estimate the butterfish mortality cap.

This rule also responds to comments on the 2012 Revised Butterfish Specifications, which were published in an interim final rule on November 9, 2012 (77 FR 67305). The 2013 butterfish specifications implemented in this rule supersede the 2012 Revised Butterfish Specifications implemented in that interim final rule. Therefore, instead of publishing a final rule to address comments received on the interim final rule, such comments are addressed in this final rule.

Comments and Responses on the 2013 MSB Specifications

NMFS received six comments on the 2013 MSB specifications from: One member of the public; one on behalf of Deep Sea Fish of Rhode Island, Inc. (a freezer/processor in Rhode Island); one

on behalf of Seafreeze, Ltd. (a frozen seafood producer based in Rhode Island); one from the Garden State Seafood Association (GSSA) (an industry group representing members of the commercial fishing industry in New Jersey); one from Lund's Fisheries, Inc. (a seafood processing facility in New Jersey), and one from Tokai International, Inc. (an export business that ships seafood to Japan).

Comment 1: Deep Sea Fish of Rhode Island, Inc., Tokai International Inc., and SeaFreeze, Ltd., commented in support of increasing the 2013 butterfish specifications and are in favor of implementing the 2013 MSB specifications on or before January 1, 2013, so that the butterfish fishing industry can take advantage of the early winter Japanese export market when butterfish have the highest fat content. Tokai International, Inc., noted that the fat content of butterfish begins to decrease in February, making butterfish less marketable.

Response: NMFS has published this final rule as soon as possible so that the butterfish fishing industry can take advantage of the increase in quota for the directed fishery. We recognize that the increase in the directed butterfish fishery quota would be less valuable to the butterfish industry if delayed further into the fishing year. Due to concerns about the lost economic opportunity from delaying the effectiveness of this rule for 30 days to comply with the Administrative Procedure Act, there exists good cause to waive the 30-day effectiveness period and implements the 2013 MSB specifications on the date of publication in the Federal Register.

Comment 2: GSSA and Lund's Fisheries, Inc., commented in support of the increased butterfish specifications, the proposed management measures for butterfish and longfin squid, the butterfish mortality cap in the longfin squid fishery, and corrections to the MSB regulations.

Response: NMFS is implementing the proposed butterfish specifications, management

measures for butterfish and longfin squid, the butterfish mortality cap, and the corrections to the MSB regulations in this final rule.

Comment 3: GSSA and Lund's Fisheries, Inc., commented in support of the 2013-2015 Atlantic mackerel specifications, but noted some changes to the mackerel specification setting process that should be considered for the future, such as modifying the method to account for Canadian catch, accounting for discards in the recreational fishery allocation, and reconsidering the buffer for management uncertainty in setting the commercial ACT. GSSA and Lund's expressed disappointment that the process of setting the U.S. ABC does not provide a mechanism to increase the U.S. ABC if Canadian catches are smaller than predicted. Lund's suggested that Canadian underages should be added to the U.S. ABC in an in-season adjustment. GSSA and Lund's also commented that a discard rate should have been applied to the recreational allocation.

Response: The addition of a mechanism to increase the U.S. ABC if Canadian catches are smaller than predicted would represent a significant change to the commercial quota system for mackerel. Such an adjustment would need to be considered through the Council process, and could only be implemented through a framework adjustment or an amendment to the FMP, rather than through specifications. The Council would, therefore, have to consider such a mechanism in a future action. In addition, reliable discard estimates for the recreational fishery are not available. Given the past performance of the recreational fishery, and the 10-percent buffer, NMFS believes that the potential for discards was adequately accounted for. The Marine Recreational Information Program (MRIP) estimates three types of recreational catch: Fish brought back to the dock in a form that can be identified by trained interviewers; fish that are

used for bait, released dead, or filleted and are identified by individual anglers; and fish that are released alive and are identified by individual anglers. The MRIP estimate of recreational catch in 2011, the most recent year of complete data, was 932 mt. As the MRIP data do include some limited information on recreational discards, the mackerel recreational allocation for 2013-2015 of 2,443 mt is likely sufficient to cover both recreational catch and discards. As NMFS improves recreational data collection, the MSB Monitoring Committee will re-examine the recreational ACT and consider whether discards should be accounted for in an explicit deduction.

Comment 4: GSSA and Lund's also commented that the commercial ACT should have been set equal to the commercial ACL, with zero buffer for management uncertainty (instead of the 15-percent buffer proposed for 2013-2015) considering the mackerel fishery's performance is consistent with the specifications that have been set for the fishery in recent years.

Response: Given recent performance of the fishery, NMFS, consistent with the Council's recommendation, determined that a 15-percent buffer between the commercial ACL and ACT was appropriate to prevent overages of the U.S. ABC, and to provide buffer for uncertainty in Canadian catch estimates. While preliminary information provided to the Council during its decision-making process showed Canadian catch in 2013 may be set at lower levels than 2012, it is unclear whether the decrease in Canadian catch is due to concerns about the status of the mackerel stock or other unknown factors. Therefore, NMFS concurs with the Council that setting Canadian catch and the buffer for management uncertainty at status quo levels (15 percent between the commercial ACL and ACT) is appropriate, due to the general uncertainty associated with the mackerel stock and the final Canadian assessment results. In

addition, the buffer for management uncertainty includes consideration of management uncertainty issues for commercial catch estimation, including discard estimation and general imprecision in catch estimation.

Comment 5: A member of the public commented that the butterfish quotas should not be increased, but should be decreased by 75 percent instead.

Response: NMFS does not believe that there is any information to warrant a decrease in the butterfish specifications for 2013. On the contrary, the NEFSC analysis showed that the increasing the butterfish catch to 16,800 mt would not lead to overfishing.

Comments on Revised 2012 Butterfish Specifications

NMFS recently published an interim final rule to revise 2012 butterfish specifications (77 FR 67305; November 9, 2012). The interim final rule raised the 2012 butterfish ABC to 4,200 mt (from 3,622 mt), and specified the butterfish ACT at 3,780 mt, the DAH DAP at 872 mt, and the butterfish mortality cap at 3,165 mt. The rationale for the interim final rule is discussed in the background section of the preamble for that action and is not repeated here.

The rule specified that these revised butterfish quotas would be effective from November 8, 2012, through the remainder of the 2012 fishing year (December 31, 2012), until superseded by 2013 MSB specifications. Typically NMFS would publish a rulemaking to finalize the measures put forward in an interim final rule, and use the final rule to respond to any comments on the interim final measures. Because of the timing of a rulemaking to finalize the revised 2012 butterfish specifications and the timing of this final rule to implement 2013 MSB specifications coincide, and because the 2013 MSB specifications would supersede the 2012 measures, NMFS decided to forego the publication of a rulemaking to finalize the revised 2012 butterfish

specifications and to instead respond to comments on the revised 2012 butterfish specification in the final rule for 2013 MSB specifications. One individual submitted a comment on the interim final rule, and NMFS addresses the comment below, in two parts.

Comment 1: One individual commented that NMFS raised the ABC on a stock for which the overfished/overfishing status is unknown. The commenter stated that while NMFS previously classified butterfish as overfished with overfishing occurring, the SSC was forced by NMFS to change the determination so that the longfin squid fishery could continue to operate. The commenter stated that the butterfish stock is so depleted that the directed fishery has not attained its quota for the 2012 fishing year. The commenter also stated that the fishery did not catch the directed fishery quota in previous years because bycatch closures closed the directed fishery before the fish were available to fishery participants from southern states that rely on butterfish catch in the fall. Finally, the commenter stated that the longfin squid fishery is wasteful, and is characterized by the excessive catch of undersized fish due to the small mesh size used to prosecute the fishery.

Response: The commenter incorrectly characterizes the current and previous status of the butterfish stock. Until recently, NMFS listed butterfish as overfished (i.e., stock biomass below the overfishing threshold), with overfishing not occurring (i.e., fishing mortality was not occurring at a rate higher than the stock's natural replenishment rate) based on the results of the 38th Stock Assessment Review Workshop (SAW 38; 2004). NMFS, rather than the Council's SSC, officially changed the overfished status for butterfish to "unknown" in mid-2012, after a review of the results of the 49th Stock Assessment Review Workshop (SAW 49; 2010) suggested that the stock status reference points that resulted from SAW 38 (i.e. the overfished status from

SAW 38) were inappropriate. The overfishing status for butterfish has not been changed. The change to the stock status determination was entirely separate from any 2012 rulemakings related to either the longfin squid or butterfish fisheries. NMFS did not change the butterfish overfished status from “overfished” to “unknown” to facilitate a longfin squid fishery during the 2012 fishing year.

The commenter does not present support for the statement that butterfish stock depletion has caused the fishery to catch less than the 2012 butterfish quota. To the contrary, recent trawl survey indices indicate that butterfish abundance is stable or increasing. In addition, management controls in recent years have constrained landings. While NMFS has increased the butterfish quota at several points during the 2012 fishing year, possession limits restrict the amount of butterfish that limited access and incidental butterfish permit holders can land on a given trip (up to 5,000 lb per trip for limited access permit holders, depending on mesh size, and up to 650 per trip for incidental permit holders). Further, the directed butterfish fishery quota (DAH) has been maintained at a low level since 2004 in order to limit fishing mortality on the butterfish stock following the “overfished” status determination in SAW 38. The previous low DAH, coupled with possession limits, has prevented the formation of a strong market for butterfish, and more likely explains why the DAH has not been attained in 2012 in spite of quota increases.

Comment 2: The commenter also stated that the directed fishery quota was not attained in previous years because “bycatch closures” closed the directed fishery before the fish were available to southern fishery participants in the fall.

Response: This comment is unclear. If the commenter is referring to closures of the

directed butterfish fishery (based on the DAH) in recent years, these closures were the result of directed butterfish landings, not a result of bycatch limits due to butterfish bycatch in other fisheries. If the commenter is referring to the availability of butterfish mortality cap quota for fall participants in the longfin squid fishery, NMFS notes that the butterfish mortality cap was not constraining for fall participants in the longfin squid fishery in either 2011 or 2012, the only 2 years that the cap has been in operation. The Trimester III (September 1 – December 31) longfin squid fishery operated without a closure related to butterfish for both years.

Finally, regarding incidental catch in the longfin squid fishery, NMFS notes that fishery management plans for managed species consider incidental catch and discards. This means that annual catch levels are set so that mortality from all sources, including incidental catch and discards in the longfin squid fishery, are accounted for. Thus, while there is incidental catch of other species in the longfin squid fishery, NMFS works to constrain such catch within the context of overall catch levels appropriate for each managed stock.

Changes from the Proposed Rule

There are no changes from the proposed rule to the mackerel or butterfish specifications or management measures.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the MSB FMP, other provision of the Magnuson-Stevens Act, and other applicable laws.

The Council prepared an EA for the 2013 specifications, and the NOAA Assistant Administrator for Fisheries concluded that there will be no significant impact on the human environment as a

result of this rule. A copy of the EA is available upon request (see ADDRESSES).

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

The Assistant Administrator for Fisheries finds good cause under section 553(d) of the Administrative Procedure Act to waive the 30-day delay in effectiveness for this action for all requirements except for those in 648.27. This action increases the butterfish harvest available to the fishing industry for the 2013 fishing year. The primary butterfish market available to the butterfish fishing industry occurs in late December through mid-February due to the high fat content of the fish after feeding during the early winter. In addition, the current regulations cap the butterfish trip limit at 5,000 lb (2,268 kg) for limited access permit holders, while this final rule implements an unlimited trip limit at the start of the fishing year. This change in the trip limit for the directed butterfish fishery will also allow the butterfish fleet to obtain as much profit early in the year as possible, when the market is available. If the effectiveness of this rule were delayed for 30 days from the date of publication, it would likely be effective after the butterfish market has decreased. Therefore, vessels fishing for butterfish would be unable to obtain the increased economic opportunity this final rule provides by increasing the butterfish quota. Failure to make this final rule effective immediately will undermine the intent of the rule, which is to promote the utilization and conservation of the Atlantic mackerel, squid, and butterfish resource.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA, included in the preamble of this final rule, in support of the 2013 specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-

preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summaries in the IRFA, a summary of the significant issues raised by the public in response to the IRFA, and NMFS's responses to those comments. A copy of the IRFA, the RIR, and the EA are available upon request (see ADDRESSES).

Statement of Need for this Action

This action proposes 2013-2015 specifications for mackerel and 2013 specifications for butterfish, along with management measures for longfin squid and butterfish. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to the proposed and final rules and are not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no issues related to the IRFA or the economic impacts of the rule more generally raised in public comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Based on permit data for 2011, 3,405 commercial or charter vessels possessed MSB permits for the 2011 fishing year, and similar numbers of vessels are expected to have MSB permits for 2013. All but a few of these participants can be considered small businesses under the guidelines of the Small Business Administration (SBA). Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been

defined by the SBA as firms with gross revenues of up to \$4.0 and \$7.0 million, respectively.

There are no large entities, as that term is defined in section 601 of the RFA, participating in this fishery. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, there are no Federal rules that duplicate, overlap, or conflict with this rule.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impacts on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Actions Implemented With the Final Rule

The mackerel commercial DAH (33,821 mt) and recreational ACT/RHL (2,443 mt) implemented in this action represent no change from status quo. Commercial mackerel landings for 2011 were 1,463 mt, and recreational catch was 932 mt, and in both cases, catch was below the allocation. As of the publication of this rule, mackerel catch is estimated to be 5,325 mt and is not likely to increase significantly for the remainder of the year, which means that 2012 catch will also be below the 2012 DAH. Therefore, this action allows the mackerel fleet the opportunity to harvest more than they have in the previous year. Overall, this action is expected

to generate revenue very similar to the 2012 revenue for vessels that participate in the commercial mackerel fisheries.

The butterfish DAH implemented in this action (2,570 mt) represents an increase of 1,698 mt over the 2012 DAH (872 mt). Due to market conditions, there has not been a directed butterfish fishery since 2001; therefore, recent landings have been low. The increase in the DAH has the potential to dramatically increase revenue for butterfish permitted vessels because the butterfish fishery been an incidental catch fishery for several years.

In addition, the three-phased management system implemented for the directed butterfish fishery, which allows an unlimited quota until butterfish harvest reaches a particular threshold, allows vessels to harvest substantially more butterfish during the start of the fishing year, when the market is suspected to be available. The three-phased management system allows the potentially expanded directed butterfish fishery to increase catch without exceeding the ACL and having to pay back overages the following year.

The butterfish mortality cap implemented in this action (4,464 mt) represents a 1,299-mt increase over the current 2012 cap level (3,165 mt). The increase in the butterfish mortality cap is less restrictive on the longfin squid fishery than the previous year. While longfin squid catch will still be restrained by the longfin squid DAH, there is less of likelihood that the longfin squid fishery will be closed due to the butterfish mortality cap. In addition, the management measures for the longfin squid fishery that are being implemented will ensure that the directed longfin squid fishery is not closed during the last 2 weeks of a particular Trimester, therefore causing economic harm to the fishing industry when there is still a small amount of catch available to the fleet. Therefore, the implementation of these actions could result in an increase in revenue for

the longfin squid fishery for 2013.

The Illex and longfin squid IOYs confirmed in this action (22,915 mt and 22,049 mt respectively) represent no change from status quo. Thus, implementation of this action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2013.

Alternatives to Actions in the Final Rule

The Council analysis evaluated three alternatives to the specifications for mackerel. The first (status quo) alternative differed from the mackerel specifications implemented, only in that the status quo alternative recommends specifications for 1 year, while the final specifications are being implemented for 3 years (2013-2015). The status quo alternative would have set the stock-wide ABC of 80,000 mt, Canadian catch of 36,219 mt, and a U.S. ABC of 43,781 mt. The second alternative (the least restrictive) would have set the stock-wide ABC at 100,000 mt, maintained Canadian catch at 35,219 mt, and would have set a U.S. ABC at 63,781 mt. This alternative could have generated increased revenue if more mackerel became available to the fishery. The third alternative (the most restrictive) would have set the stock-wide ABC at 60,000 mt, maintain Canadian catch at 36,219 mt, and would have set a U.S. ABC at 23,781 mt. This alternative could have generated the lowest revenue of all of the alternatives. These two alternatives were not selected because they were inconsistent with the ABC recommended by the SSC.

There were three alternatives to the butterfish specifications being implemented that were not selected by the Council. The first (status quo) alternative would have kept the butterfish ABC and ACL at 3,622 mt, the ACT at 3,260 mt, the DAH and DAP at 1,087, and the butterfish mortality cap at 2,445 mt. The second alternative (least restrictive) would have set the ABC and

ACL at 10,500 mt, the ACT at 9,450 mt, the DAH and DAP at 3,213 mt, and the butterfish mortality cap at 5,625 mt, and would have generated the highest revenues of all of the alternatives. The fourth alternative (most restrictive) would have set the ABC and ACL at 6,300 mt, the ACT at 5,670 mt, the DAH and DAP at 1,928 mt, the butterfish mortality cap at 3,375 mt, and would have generated the lowest revenue of all of the alternatives. These three alternatives were not selected because they were inconsistent with the ABC recommended by the SSC.

The Council recommended the status quo as an alternative to changing management measures for the longfin squid fishery and for the butterfish mortality cap. The status quo alternative would have required vessels possessing 1,000 lb (0.45 mt) or more of butterfish to fish with a 3-inch (76-mm) minimum codend mesh. The status quo alternatives were considered, but not selected, because the measures implemented have the potential to increase economic opportunity for the fishing fleet while still ensuring the ACL for the longfin squid fishery and the butterfish mortality cap are not exceeded. There were also two alternatives to the proposed three-phase management system for the directed butterfish fishery. The first (status quo and most restrictive) would have maintained the 5,000-lb (2.27-mt) trip limit for vessels issued longfin squid/butterfish moratorium permits using over 3-inch (76-mm) mesh, 2,000-lb (0.91-mt) trip limit for vessels issued longfin squid/butterfish moratorium permits using under 3-inch (76-mm) mesh, and the 600-lb (0.27-mt) trip limit for vessels issued squid/butterfish incidental catch permits. Even with the increase in quota, the butterfish fishery may not have been able to harvest an increased amount of butterfish with these restrictive trip limits. Therefore, this alternative would have generated the lowest amount of revenue out of all of the alternatives. The second alternative would have provided a simpler management system for the directed fishery in which

the trip limit for vessels issued longfin squid/butterfish moratorium permits would have been 20,000 lb (9.07 mt) for vessels issued longfin squid/butterfish moratorium permits using greater than 3-inch (76-mm) mesh, 2,500 lb (1.13 mt) for vessels using under 3-inch (76-mm) mesh, and 1,000 lb (4.54 mt) for vessels issued squid/butterfish incidental catch permits. If 80 percent of the DAH was projected to be harvested before October 1, the trip limit for all vessels would have been reduced to 250 lb (0.11 mt), and if the DAH was projected to be harvested on or after October 1, the trip limit for all vessels would have been 500 lb (0.23 mt). This alternative would have provided the butterfish fishery the opportunity to increase revenues over the first alternative, but not to the same extent as the alternative implemented in this action. While these alternatives were considered, they were not selected because the alternative being implemented has the potential to increase economic opportunity for vessels participating in the directed butterfish fishery while still ensuring the ACL is not exceeded. The other alternatives would not have been as effective for directed butterfish vessels to re-establish a butterfish market.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 10, 2013

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.4, paragraph (a)(5)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(5) * * *

(ii) Squid/butterfish incidental catch permit. Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of longfin squid, 600 lb (0.27 mt) of butterfish, or up to 10,000 lb (4.54 mt) of Illex squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.22.

* * * * *

3. In § 648.14, paragraphs (g)(2)(ii)(E) and (F) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(E) Possess more than 2,500 lb (1.13 mt) of butterfish, unless the vessel meets the minimum mesh requirements specified in § 648.23(a).

(F) Take, retain, possess, or land mackerel after a total closure specified under § 648.24(b)(1).

* * * * *

4. In § 648.22, revise paragraphs (b)(2)(i) and (b)(2)(ii), redesignate paragraphs (b)(3)(v) through (b)(3)(vii) as paragraphs (b)(3)(vi) through (b)(3)(viii), respectively, and add new paragraph (b)(3)(v) to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

* * * * *

(b) * * *

(2) Mackerel—(i) ABC. The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) ACL. The ACL or Domestic ABC is calculated using the formula $ACL/Domestic\ ABC = stock\text{-}wide\ ABC - C$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

* * * * *

(3) * * *

(v) The trip limit reduction thresholds for phase 2 and phase 3 of the butterfish three-phase management system will be modified annually through the specifications process. Trip limit reduction thresholds vary bi-monthly and are set to allow the butterfish fishery to continue to operate without exceeding the stock-wide ACL. An example of the phase 2 and 3 trip limit reduction thresholds is shown in the table below:

Butterfish Thresholds for Reducing Trip Limits from Phase 1 to Phase 2

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	40	1,028
Mar-Apr	47	1,208
May-Jun	55	1,414
Jul-Aug	63	1,619
Sept-Oct	71	1,825
Nov-Dec	78	2,005

* * * * *

5. In § 648.23, paragraph (a)(1) is revised to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) * * *

(1) Butterfish fishery. Owners or operators of otter trawl vessels possessing 2,500 lb (1.13 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (7.62 cm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

* * * * *

6. In § 648.24, paragraphs (a)(1), (b)(6), (c) and (d) are revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

(a) Fishery closure procedures — (1) Longfin squid. NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 90 percent of the longfin squid quota is harvested before April 15 of Trimester I and/or August 15 of Trimester II, and when 95 percent of the longfin squid DAH has been harvested in Trimester III. On or after April 15 of Trimester I and/or August 15 of Trimester II, NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of the longfin squid quota is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

* * * * *

(b) * * *

(6) Mackerel ACL overage evaluation. The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

(c) Butterfish AMs — (1) Butterfish three-phase management system. The butterfish fishery operates under a three-phase management system. Phase 1 begins annually at the start of the fishing year on January 1. Trip limit reductions are implemented in phase 2 and 3 dependent upon the amount of butterfish harvest and the trip limit reduction thresholds set during the

specification process as described in § 648.22.

(i) Phase 1. During phase 1, vessels issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) have an unlimited trip limit and vessels issued a longfin squid/butterfish moratorium permit fishing with mesh less than 3 inches (76 mm) are prohibited from landing more than 2,500 lb (1.13 mt) of butterfish per trip.

(ii) Phase 2. NMFS shall reduce the trip limit for vessels issued longfin squid/butterfish moratorium permits (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) to 5,000 lb (2.27 mt), when butterfish harvest reaches the relevant phase 2 trip limit reduction threshold. Trip limits for vessels issued longfin squid/butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) will remain at 2,500 lb (1.13 mt) of butterfish per trip.

(iii) Phase 3. NMFS shall subsequently reduce the trip limit for vessels issued longfin squid/butterfish moratorium permits to 500 lb (0.23 mt), regardless of minimum mesh size, when butterfish harvest is projected to reach the relevant phase 3 trip limit reduction threshold. The NMFS Regional Administrator may adjust the butterfish trip limit during phase 3 of the directed butterfish fishery anywhere from 250 lb (0.11 mt) to 750 lb (0.34 mt) to ensure butterfish harvest does not exceed the specified DAH.

(2) Butterfish ACL overage repayment. If the butterfish ACL is exceeded, then catch in excess of the ACL will be deducted from the ACL the following year, as a single-year adjustment.

(3) Butterfish mortality cap on the longfin squid fishery. NMFS shall close the directed

fishery in the EEZ for longfin squid when the Regional Administrator projects that 80 percent of the Trimester I butterflyfish mortality cap allocation has been harvested in Trimester I, when 75 percent of the annual butterflyfish mortality cap has been harvested in Trimester II, and/or when 90 percent of the butterflyfish mortality cap has been harvested in Trimester III.

(4) Butterfish ACL overage evaluation. The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the Federal Register, by May 15 of the fishing year in which the deductions will be made.

(d) Notification. Upon determining that a closure or trip limit reduction is necessary, the Regional Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure or trip limit reduction to all holders of mackerel, squid, and butterflyfish fishery permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure or trip limit reduction to recreational participants in the fishery; and publish notification of the closure or trip limit reduction in the Federal Register.

7. In § 648.26, paragraph (d) is revised to read as follows:

§ 648.26 Mackerel, squid, and butterflyfish possession restrictions.

* * * * *

(d) Butterfish. (1) Phase 1. A vessel issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) is

authorized to fish for, possess, or land butterfish with no possession restriction in the EEZ per trip, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that butterfish harvest has not reached the phase 2 trip limit reduction threshold, as described in § 648.24(c). Vessels issued longfin squid/butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) may not fish for, possess, or land more than 2,500 lb (1.13 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, provided that butterfish harvest has not reached the phase 3 trip limit reduction threshold, as described in § 648.24(c).

(2) Phase 2. When butterfish harvest reaches the phase 2 trip limit reduction threshold for the butterfish fishery (as described in § 648.24), vessels issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. Trip limits for vessels issued butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) will remain at 2,500 lb (1.13) per trip.

(3) Phase 3. When butterfish harvest is projected to reach the trip limit reduction threshold for phase 3 (as described in § 648.24), all vessels issued a longfin squid/butterfish moratorium permit, regardless of mesh size used, may not fish for, possess, or land more than 500 lb (0.23 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has

been issued a longfin squid/butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time.

8. In § 648.27, paragraphs (a), (c), and (d) are revised to read as follows:

§ 648.27 Observer requirements for the longfin squid fishery.

(a) A vessel issued a longfin squid and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or e-mail address for contact; and the date, time, port of departure, and approximate trip duration, at least 48 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

* * * * *

(c) A vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing greater than 2,500 lb (1.13 mt) of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land more than 2,500 lb (1.13 mt) of longfin squid per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide

notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or e-mail address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

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